

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of

No. 95A-275-INS

CONRAD K. ALLEN, NOEL S.
ALLEN, KAY S. ALLEN, and
AMERICAN PATHFINDERS, INC.,

RECOMMENDED FINDINGS OF
FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

Respondents.

On February 29, 1996, a hearing took place in the above-referenced matter. Assistant Attorney General Kathryn Leonard appeared on behalf of the Arizona Department of Insurance ("Department"). Respondents Conrad K. Allen, Noel S. Allen, and Kay S. Allen ("Respondents") appeared on their own behalf. Respondent American Pathfinders, Inc. did not appear.

Based upon the entire record, including all pleadings, motions, testimony, and exhibits, Administrative Law Judge Lewis D. Kowal prepared the following Recommended Findings of Fact, Conclusions of Law, and Recommended Order for consideration by the Director of the Department ("Director").

FINDINGS OF FACT

1. At all times material to this matter, Conrad K. Allen ("Conrad") was and is licensed in the State of Arizona as a property and casualty and life and disability insurance agent.

2. At all times material to this matter, Noel Smith Allen ("Noel") was and is licensed in the State of Arizona as a property and casualty broker and life and disability insurance agent.

3. At all times material to this matter, Kay S. Allen ("Ms. Allen") was and is licensed in the State of Arizona as a property and casualty insurance agent.

4. American Pathfinders, Inc. ("Pathfinders") was licensed as a property and casualty insurance agent in the State of Arizona. That license expired August 31, 1994 and the Notice of Hearing of this matter was issued on December 29, 1995.

5. At all times material to this matter, Pathfinders' officers were as follows: Conrad was the president, Ms. Allen was the vice-president and Noel was the secretary/treasurer.

1 6. At all times material to this matter, Conrad, Ms. Allen and Noel were
2 authorized in the insurance license issued to Pathfinders to exercise its powers.

3 7. From March 1, 1992 until November 5, 1993, Pathfinders was an agent
4 for Sutter Insurance Company ("Sutter").

5 8. Evidence presented at the hearing established that Respondents were
6 officers of Pathfinders during March 1992 and June 1994 when Pathfinders, acting
7 as an agent for Sutter, received \$565,820.00 in premiums which were not remitted to
8 Sutter or returned to the insureds but instead were used to pay operating expenses
9 of Pathfinders. Further, the Respondents admitted to being personal guarantors of
10 Pathfinders' obligations to Sutter and that they have not paid Sutter the \$565,820.00.

11 9. On September 28, 1994, the Respondents entered into a Stipulation of
12 Facts and Conclusions of Law (the "Stipulation") in Maricopa County Superior Court
13 action no. CV94-91188, Sutter Insurance Company v. Arizona Pathfinders, Conrad
14 Allen, Kay Allen, Noel Allen and Karen Allen ("CV94-91188"). Respondents
15 stipulated that Conrad, Ms. Allen and Noel were officers, directors and principal
16 stockholders of Pathfinders at all times relevant to the litigation.

17 10. Respondents' admissions in the Stipulation corroborated the
18 aforementioned testimony in Paragraph 8 above and no evidence was presented to
19 rebut them. Respondents admitted in the Stipulation that Pathfinders wrongfully
20 refused to remit \$565,820.00 in premiums collected for Sutter between March 1992
21 and June 1994, and Pathfinders wrongfully refused to remit and return \$15,554.00 in
22 unearned commissions on premiums required to be returned to Arizona premium
23 finance companies and insureds. The Stipulation further provided that the
24 Respondents stipulated to improperly utilizing funds comprised primarily of premiums
25 owed to Sutter.

26 11. On October 5, 1994, Final Judgment was entered in CV94-91188
27 wherein Sutter was awarded Judgment in the amount of \$581,374.00 against
28 Pathfinders, Conrad, Ms. Allen, Noel and Karen Allen. In awarding the Final
29 Judgment in CV94-91188, the Honorable Cheryl K. Hendrix did not accept the
30 Stipulation and did not base the Final Judgment on the Stipulation.

31 12. On December 30, 1994, Conrad filed with the Department an
32 application to renew the property and casualty broker license he holds.

33 13. Conrad failed to reveal the Final Judgment in CV94-91188 in his
34 December 30, 1994 renewal application.

1 14. On or about December 30, 1994, Noel submitted an application to the
2 Department to renew the property and casualty license he holds. Question C of the
3 renewal application asks, "SINCE YOUR LAST APPLICATION OR RENEWAL
4 HEREOF, has there been any judgment, order or other determination against you in
5 any criminal, civil, administrative or other judicial or quasi-judicial proceeding of any
6 kind in any jurisdiction based on any of the following: (1) misappropriation,
7 conversion or the withholding of monies?" . . . (5) any cause arising out of an
8 insurance transaction?". Noel answered "No" to questions (1) and "Yes" to question
9 (5).

10 15. The renewal application requires "Yes" answers of Question C to be
11 explained. The renewal application further requires an applicant to supply certified
12 copies of all judgments and any other information which relates to the explanation of
13 the "Yes" answer. Noel failed to file any written explanation or any documents by
14 way of explanation of his answer to Question C(5) in his December 30, 1994 renewal
15 application.

16 16. Noel failed to reveal the Final Judgment in CV94-91188 in his
17 December 30, 1994 renewal application.

18 17. In his December 30, 1994 renewal application, Noel listed his place of
19 employment as American Pathfinders, Inc. Pathfinders' insurance license had
20 expired four months prior to Noel's submission of the December 30, 1994 renewal
21 application.

22 CONCLUSIONS OF LAW

23 1. Respondents received notice of this proceeding as prescribed by
24 A.R.S. §§20-163 and 41-1061.

25 2. Pursuant to A.R.S. §§20-161 and 20-290, the Director has jurisdiction
26 of this matter over all of the above-named Respondents with the exception of
27 Pathfinders. Due to the expiration of Pathfinders' insurance license in August 1994
28 and the issuance of the Notice of Hearing in this matter on December 29, 1995, the
29 Director does not have jurisdiction over Pathfinders.

30 3. Respondents' conduct as described above in the Findings of Fact
31 constitutes the existence of any cause for which original issuance or any renewal of
32 the license could have been refused within the meaning of A.R.S. §20-316(A)(1).

33 4. Respondents' conduct as described above in the Findings of Fact
34

1 constitutes a record of dishonesty in business or financial matters in violation of
2 A.R.S. §20-316(A)(1) together with A.R.S. §20-290(B)(2).

3 5. Respondents' conduct as described above in the Findings of Fact
4 constitutes the wilful violation of, or wilful noncompliance with, any provision of this
5 title, or any lawful rule, regulation or order of the Director in violation of A.R.S. §20-
6 316(A)(2).

7 6. Conrad and Noel's conduct as described above in the Findings of Fact
8 constitutes the existence of misrepresentation in obtaining or attempting to obtain
9 any insurance license in violation of A.R.S. §20-316(A)(3).

10 7. Respondents' conduct as described above in the Findings of Fact
11 constitutes a record of misappropriation, conversion or irregular withholding by the
12 applicant of monies belonging to policyholders, insurers, beneficiaries or others and
13 received in the conduct of business in this state or elsewhere in violation of A.R.S.
14 §20-290(B)(3) together with A.R.S. §20-316(A)(1).

15 8. Respondents' conduct as described above in the Findings of Fact
16 constitutes a conduct of affairs under their licenses showing them to be incompetent
17 or a source of injury and loss to, or repeated complaint by, the public or any insurer
18 within the meaning of A.R.S. §20-316(A)(7).


19 9. Grounds exist for the Director to suspend, revoke or refuse to renew
20 Respondents' insurance licenses, impose a civil penalty upon Respondents, and/or
21 order restitution, pursuant to A.R.S. §20-316(A) and (C).

22 **RECOMMENDED ORDER**

23 Based upon the above, the undersigned Administrative Law Judge
24 recommends that all insurance licenses issued to Respondents Conrad K. Allen,
25 Noel Smith Allen and Kay S. Allen be immediately revoked.

26 DATED this 12th day of April, 1996.

27
28 OFFICE OF ADMINISTRATIVE HEARINGS

29
30 
31 _____
32 LEWIS D. KOWAL
33 Administrative Law Judge
34